## TOPICAL INDEX


| | Page |
|---|---|
| Respondent's Response | 1 |
| Statement of Case | 2 |
| Jurisdiction | 2 |
| Questions Presented | 2 |
| Reasons for Denying the Writ | 2 |


## TABLE OF AUTHORITIES CITED

**Cases**


| | |
|---|---|
| Davenport v. Servicemen's Group Life Insurance, 119 Ga. App. 685 | 4 |
| Hill v. Hill, 23 Cal. App. 3d 760 | 2 |
| Stribling v. United States, 419 F.2d 1350 | 3, 4 |


**Statutes**


| | |
|---|---|
| 28 U.S.C. 1257(3) | 2 |
| 38 U.S.C. 765 *et seq.* (Servicemen's Group Life Insurance Act) | 2, 3, 4 |


**Text**


| | |
|---|---|
| 2 A.L.R. 2d 489 *et seq.* | 3 |

IN THE SUPREME COURT OF THE UNITED STATES

No. 72-67

HORACE H. HILL, SR. and PAULINE A. HILL,

*Petitioners,*

vs.

CHARLEEN JO HILL,

*Respondent.*

# RESPONDENT'S RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Pursuant to the Court's direction to the Office of the Clerk to request that a response be filed in this case, and as requested by Michael Rodak, Jr., Clerk, by letter dated September 12, 1972, respondent, Charleen Jo Hill, hereby responds to the Petition for a Writ of Certiorari previously filed herein and prays that the Court deny the writ of certiorari.

## STATEMENT OF CASE

Respondent concedes that the statement of the case as contained in petitioners' petition filed herein is a true and accurate statement of the case.

## JURISDICTION

Respondent concedes that this Court has jurisdiction under 28 U.S.C. § 1257(3), but denies that there is a difference of opinion among state and circuit courts of appeals upon the point in question, which is an interpretation of a federal statute.

## QUESTIONS PRESENTED

Respondent concedes that the questions as presented in petitioners' petition for writ of certiorari filed herein correctly state the issues involved.

## REASONS FOR DENYING THE WRIT

The decision of the Court of Appeal, Second Appellate District, State of California, as officially reported in 23 Cal. App. 3d 760, a copy of which is attached to petitioners' petition, marked Appendix "A," and the case of *Stribling v. United States*, 419 F.2d 1350 (8th Cir. 1969), correctly construe the Servicemen's Group Life Insurance Act (38 U.S.C. § 765 *et seq.*), and aforesaid cases meet each and every argument that is presented by petitioners herein, as in each case the same arguments were advanced as are advanced herein.

The Court of Appeal, Second Appellate District, State of California, relied upon *Stribling v. United States,* 419 F.2d 1350, but did not hold that it was bound to follow the *Stribling* case, but did say that it was very compelling, and the arguments as presented in the *Stribling* case were very persuasive and the California court answered petitioners' arguments in an almost identical manner as the *Stribling* case answered the arguments presented therein for a liberal construction of the Servicemen's Group Life Insurance Act, as adopted in 1965.

Both of the aforesaid cases pointed out that a liberal construction of this Act would be in violation of the Congressional intent when the Act was adopted. Both cases further stated that a liberal construction of the Servicemen's Group Life Insurance Act would cause confusion in the Office of the Uniform Services and of the private insurance companies participating in the program, and would delay in numerous instances the proper person obtaining the proceeds of the insurance policies.

The above rationale is clear when all of the cases cited by petitioners and as shown by the annotations in 2 A.L.R. 2d 489 *et seq.* indicate the numerous disagreements as to whom the proceeds of life insurance policies should be paid upon the deaths of veterans of World War I, World War II, and the Korean War. This does not even take into account unreported decisions which were probably as numerous, or more so, than the reported ones. This is true because the liberal construction always necessarily brings in a question of fact, and it is common knowledge that when such disputed facts can change the results of who will receive moneys, this engenders and promotes litigation which results in long delay

of the payment of moneys which are the subject of any such litigation.

Since the Servicemen's Group Life Insurance Act of 1965 was enacted, there are only three cases, including this California decision, dealing with the construction of 38 U.S.C. § 770. The other cases are the *Stribling* case, *supra*, and *Davenport v. Servicemen's Group Life Insurance*, 119 Ga. App. 685. The *Davenport* case was not squarely in point, as it ruled that even under a liberal construction, the proof of the serviceman's intent to change the beneficiary of his life insurance policy was not sufficient and the proceeds were awarded to the named beneficiary on file in the Office of the Armed Services, which leaves us with only the instant case and the *Stribling* case as being the only two cases involved with the present Act, and it is common knowledge that the deaths occurring in Vietnam are very numerous and probably would have resulted in more litigation if the *Stribling* case had not been decided in 1969 by the Eighth Circuit Court of Appeals.

Respondent contends that the rationale in the California case from which this petition for a writ of certiorari arose and the *Stribling* case should be adopted as the proper construction of the Act of 1965, and of the Congressional intent when such Act was adopted.

Respectfully submitted,

KENNETH S. LAWSON

*Attorney for Respondent*

STATE OF CALIFORNIA )
) ss.
County of Orange )

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, State of California, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 326A Main Street, Huntington Beach, California 92648, that on OCTOBER 10th, 1972, I served the within RESPONDENT'S RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA on the following named parties by depositing two copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California, addressed to said parties at the addresses as follows:

FREDERIK W. CHEL
110 Pine Avenue, Suite 808
Long Beach, California 90802

RAYMOND C. SIMPSON
110 Pine Avenue, Suite 406
Long Beach, California 90802

I declare under penalty of perjury that the foregoing is true and correct.

Executed on OCTOBER 10th, 1972, at HUNTINGTON BEACH, CALIFORNIA.

D. A. Standefer

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